

the officer making the arrest is to give her time to withdraw. If she is the judgment-debtor, he is bound to go in and arrest her.

Rule No. 212 in Mr. Belchambers's book is, so far as it is inconsistent with, superseded by the Code.

No order is necessary in this case to authorize the Sheriff to enter the zenana. The order I make is, that if and when the Sheriff's officer can enter the house, he is to execute the writ in the zenana. I make the order not because it is necessary, but because the Sheriff thinks that he is bound to have the order of the Court for his protection.

Attorney for the defendant: Baboo *N. G. Newgee*.

Attorneys for the Sheriff: Messrs. *Roberts and Morgan*.

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### APPELLATE CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Pontifex, and Mr. Justice Morris.*

IN THE MATTER OF THE MAHARAJAH OF DURBHUNGAH & OTHERS.

*Stamp Act (I of 1879), s. 3, cls. 9, 11, 19—Deed of Family Arrangement.*

1880  
Dec. 17.

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By a deed of family arrangement, one brother conveyed a parganna and the sum of two and-a-half lacs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims.

*Held*, that the deed was neither a conveyance or a settlement, nor an instrument of partition, within the meaning of Act I of 1879.

THIS was a reference made by the Board of Revenue to the High Court, under s. 46 of Act I of 1879, asking for an expression of opinion as to the amount of stamp-duty payable on a certain deed executed by the Maharajah of Durbhungah and his brother on the 20th August 1880. The deed, amongst other matters, recited, that the Maharajah had succeeded to, and was in possession of, the Raj and all property, moveable and immovable, which had been possessed by his father, subject to a charge for the maintenance of the junior members of the family; that disputes had arisen between the Maharajah and

\* Reference No. 1218 B, by A. Forbes, Esq., Under-Secretary to the Board of Revenue, dated 20th October 1880, under s. 46 of Act I of 1879.

1881  
KADUM-  
BINEIS  
DOSSEE  
v.  
KOYLASH-  
KAMINEE  
DOSSEE.

1880  
 IN THE  
 MATTER OF  
 THE MAHA-  
 RAJAH OF  
 DURBHUN-  
 GARH.

his younger brother as to the claims of the latter in the said properties; and that the younger brother had, by way of compromise, agreed to waive and relinquish all claims which he had, or might have, on the said Maharajah, in consideration of receiving under the Baboona form of Suunud, Parganna Bachoor and two and-a-half lacs of rupees. In accordance with these recitals, the Maharajah granted and conveyed to his younger brother such an interest in the abovementioned properties as was usually conveyed under a Baboona grant, to have and to hold the same as a maintenance or Baboona grant according to the custom of the family, subject to certain conditions, amongst which were, that the name of the Maharajah should stand recorded on the Collectorate roll as the proprietor of the said lands; that he should pay the revenue and other cesses, and the younger brother absolved and released the Maharajah from all claims and demands which he might have as one of the sons of the late Maharajah in any property whatsoever belonging to the Raj. The deed was stamped with Rs. 5 as a release, and Rs. 15 as a deed of trust.

The Collector of Durbhungah, to whom the instrument was presented for adjudication under s. 30 of the Stamp Act, was of opinion, that the deed must either be taken as a gift or as a settlement, and held it to be the latter, because it was a gift or disposition of property made for family reasons, and ordered evidence to be taken as to the net annual rental in order that the value of the stamps to be affixed might be ascertained.

The Board of Revenue dissented from the view taken by the Collector, thinking that the document was in the nature of a settlement according to the definition given in cl. 19, s. 3, Act I of 1879, and referred the question for the decision of the High Court.

*Mr. Evans and Mr. H. Bell* for the Maharajah.

*Mr. Bonnerjee* for the grantee.

The opinion of the High Court was given by

GARTH, C. J.—We think that the instrument in question is already sufficiently stamped.

It is neither a "conveyance," nor a "settlement," nor an "instrument of partition," within the meaning of Act I of 1879.

It is in its nature a deed of arrangement, by which a sum of money was paid absolutely, and a maintenance grant made by the Maharajah of Durbhungah to his younger brother, by way of discharge and satisfaction of all claims, by way of maintenance or otherwise, to which the latter was entitled as the son of the late Maharajah.

The instrument would, no doubt, have been a "conveyance" under the Stamp Act of 1869, because it is a deed by which property is conveyed *inter vivos*; but the definition of a conveyance in the Act of 1879 [see s. 3 (9)] excludes all transfers or conveyances, which are not made by way of sale, and this transfer, we consider, was clearly not made by way of sale.

1880  
IN THE  
MATTER OF  
THE MAHA-  
RAJAH OF  
DURBHUN-  
GAH.

*Before Mr. Justice Cunningham and Mr. Justice Prinsep.*

NILMONEY SINGH (PLAINTIFF) v. HEERA LALL DASS  
(DEFENDANT).\*

1881  
March 14.

*Rent Suit — Decree obtained ex parte — Admissibility of, as Evidence — Finality of, with regard to its Subject-matter — Civil Procedure Code (Act X of 1877), s. 13, expl. 4.*

A decree obtained *ex parte* is not final within the meaning of expl. 4, s. 13 of Act X of 1877.

Such a decree is not conclusive evidence of the amount of rent payable by the same defendant in another suit for subsequent rent of the same property.

Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for a previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the former decree, which had been obtained *ex parte*, and which he also alleged had been duly executed, as evidence of the amount of rent due to him by the defendant, but it appeared that the lower Court had found that the alleged execution-proceedings were fraudulent, and that no steps had been taken which gave finality to the decree,—

\* Appeal from Appellate Decree, No. 2272 of 1879, against the decree of R. Towers, Esq., Officiating Judicial Commissioner of Chota Nagpore, dated the 7th June 1879, affirming the decree of Baboo Radha Madhub Bose, Deputy Collector of Manbhoom, dated the 23rd January 1879.